

FILED

JUN 20 2012

**SECRETARY, BOARD OF
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF BERRY PETROLEUM COMPANY FOR AN ORDER ESTABLISHING A 1,280 ACRE DRILLING UNIT FOR A HORIZONTAL WELL FOR PRODUCTION OF OIL AND GAS FROM THE LOWER GREEN RIVER, AND WASATCH FORMATIONS AND MODIFYING UTAH ADMIN. CODE R649-3-2(5), IN SECTIONS 31 AND 32 IN TOWNSHIP 4 SOUTH, RANGE 5 WEST, USM, DUCHESNE COUNTY, UTAH.

**SECOND AMENDED
REQUEST FOR AGENCY ACTION**

Docket No. 2012-020

Cause No. 139-92

BERRY PETROLEUM COMPANY ("Petitioner"), by and through its attorneys, Holland & Hart LLP, hereby amends Petitioner's Request for Agency Action originally filed April 10, 2012, amended on May 4, 2012, and on file in this cause (the "Request"). Petitioner's amended Request sought an order "allowing only one horizontal well per drilling unit for production of oil and gas from the Uteland Butte Member of the Lower Green River Formation." After further consideration, Petitioner is hereby requesting an order expanding the spaced interval to include the Lower Green River and Wasatch Formations.

Additionally, Petitioner hereby removes Sections 4 and 5 in Township 5 South Range 6 West, USM from the Request. Thus, this second amended Request will now consist of a single 1,280 spacing unit for a horizontal traversing Sections 31 and 32 in Township 4 South, Range 5 West, USM.

Finally, Petitioner is seeking to modify Utah Admin. Code R649-3-2(5), which provides that the “horizontal interval shall not be closer than one thousand three hundred and twenty (1,320) feet to any vertical well completed in and producing from the same formation,” to allow a setback distance of 660 feet between vertical wells and the producing lateral of the horizontal well.

The heading above has been amended to accurately reflect these changes. In the interests of clarity and in order to provide complete notice of the contents of the amended Request, Petitioner restates the Request, as amended, in its entirety as follows:

BERRY PETROLEUM COMPANY (“Petitioner), by and through its attorneys, Holland and Hart LLP, pursuant to Utah Code Ann. 40-6-5(3)(b) and 40-6-6, hereby requests the Utah Board of Oil, Gas and Mining (the “Board”) to enter an order establishing a 1,280 acre drilling unit for a horizontal well for the production of oil and gas from the Lower Green River and Wasatch Formations in the following lands:

Township 4 South, Range 5 West, USM

Section 31: All

Section 32: All

Duchesne County, Utah

(the "Subject Lands").

In support of its Second Amended Request for Agency Action (the "Request"), Petitioner respectfully states and represents:

1. Petitioner is a Delaware corporation in good standing having its principal place of business in Denver, Colorado. Petitioner is qualified to do business in Utah and is fully and appropriately bonded with all Federal, Indian, and State of Utah agencies.

2. The Board has jurisdiction of the parties and of the subject matter of this Request pursuant to Utah Code Ann. § 40-6-1, *et seq.*

3. The Subject Lands are within the area generally known as the Lake Canyon field. The oil, gas, and associated hydrocarbons underlying the NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32 are held in private (fee) ownership and are currently under lease. All other oil, gas and associated hydrocarbons underlying the Subject Lands are Indian lands. The Indian lands are subject to an Exploration and Development Agreement between the Ute Indian Tribe, Ute Distribution

Corporation, Bill Barrett Corporation, and Berry Petroleum Company, and approved by the United States Bureau of Indian Affairs (the "E&D Agreement"). Once issued, Petitioner will own a minority of the working interest in the leases issued for these lands under the E&D Agreement, but has been designated as operator for these sections.

4. For purposes of this Request, the Lower Green River and Wasatch Formations are defined as:

The equivalent stratigraphic section from the lower Green River TGR-3 Marker found at 3,423 feet MD to the top of the North Horn Formation found at 7,895 feet MD in the Gavilan Petroleum, Ute 14-9 Well located in the SE¼ of Section 14, T5S, R5W, USM (API No. 43013305410000).

5. DOGM records indicate that the application for permit to drill ("APD") for the Ute Tribal 4H-31-45 Well was approved on May 21, 2012. As currently approved, this well is a horizontal well located entirely within Section 31. Petitioner plans to amend this APD to cover the drilling of a horizontal well traversing Sections 31 and 32. This amended APD has not yet been filed.

6. As to vertical wells, DOGM records indicate that there is only one producing well located on the Subject Lands. The LC Fee 10-31D-45, with a surface location of 2,200' FSL and 2,402' FWL in the NE¼SW¼ with a bottom hole location of 1,955' FSL and 1,978' FEL in the NW¼SE¼ of Section 31, began producing on April 10, 2012. However, DOGM's website does not provide a completion date for this well and

continues to report the status as “Spudded, (Drilling commenced, Not yet completed)”.

There are no other producing wells located on the Subject Lands. Petitioner has filed applications for permit (“APD”) for the following vertical wells:

<u>Well</u>	<u>Location</u>
LC Tribal 3-31-45	Section 31: NE $\frac{1}{4}$ NW $\frac{1}{4}$
LC Tribal 1-31D-45	Section 31: NE $\frac{1}{4}$ NE $\frac{1}{4}$ (BHL)
LC Tribal 16-32D-45	Section 32: SE $\frac{1}{4}$ SE $\frac{1}{4}$ (BHL)
LC Tribal 12-32-45	Section 32: NW $\frac{1}{4}$ SW $\frac{1}{4}$

APDs for these wells have been filed with DOGM, but have not yet approved.

7. The Subject Lands currently are not subject to any spacing order of the Board. All vertical wells on the Subject Lands, including those that are being drilled or for which applications for permits to drill (“APD”) have been filed, have been located in accordance with the Utah Division of Oil, Gas and Mining’s (“DOGM”) and the Board’s general rules, including the well location and siting rules contained in Utah Admin. Code R649-3-2 and R649-3-3.

8. Utah Admin. Code R649-3-2(3) through (7) govern the drilling of horizontal wells. These rules: (1) provide that no portion of the horizontal interval may be located closer than 660 feet to a drilling or lease or spacing unit boundary; (2)

establish a “temporary six hundred and forty (640) acre spacing unit” for a horizontal well; and (3) require that the horizontal interval may not be located closer than 1,320 feet to any vertical well. Exceptions to these rules may be administratively granted by DOGM in accordance with Utah Admin. Code 9-3-2(9).

9. Through this Request, Petitioner is seeking establishment of a 1,280 acre spacing unit for a horizontal well for production from the Lower Green River and Wasatch Formations. The producing lateral for this horizontal well will traverse two sections. As stated above, the default rules for horizontal wells create a temporary 640 acre spacing unit comprising a single section. Thus, in order to enable the drilling of a lateral traversing two sections, a 1,280 acre spacing unit must be created, which requires an order of the Board.

10. Additionally, because the ownership in the Subject Lands consists of both Indian and fee lands, a communitization agreement is required in order to pool these interests. The Bureau of Land Management, acting as technical advisor to the Bureau of Indian Affairs, requires a spacing order from the Board as a prerequisite to issuing a communitization agreement.

11. As stated above, the rules governing the location and siting of horizontal wells provide that “[a]ny horizontal interval shall not be closer than one thousand three

hundred and twenty (1,320) feet to any vertical well completed in and producing from the same formation.” Utah Admin. Code R649-3-2(5). Under Utah Admin Code. R649-3-2(1.1), vertical wells require a setback of only 920 feet between adjacent wells. Petitioner does not believe that these general setback requirements accurately reflect the geology of the Subject Lands. Petitioner has obtained approval of numerous exception locations from DOGM, pursuant to Utah Admin. Code R649-3-3, to locate vertical wells closer than 1320 feet from each other. To date, Petitioner has not discovered any evidence of communication between the wells located in accordance with these exception locations. Based on its geological and engineering analysis, Petitioner believes that a 660 foot setback distance between vertical wells and the producing lateral of a horizontal well within the Lower Green River and Wasatch Formations is appropriate.

12. The horizontal drilling unit sought by this Request will be, upon approval of the Request and consistent with the DOGM and the Board’s general rules and prior precedent, applicable only to the horizontal well traversing the Subject Lands. Existing and future vertical wells located on the Subject Lands will continue to be located and drilled in accordance with the general siting and location rules, pursuant to Utah Admin. Code R649-3-2(5) which provides that “[v]ertical wells drilled to and completed in the same formation as in a horizontal well are subject to applicable drilling unit orders of the

board or the other conditions of this rule that do not specifically pertain to horizontal wells and may be drilled and produced as provided therein.” (emphasis added). Thus, under the current rules, the drilling unit established for a horizontal well is separate from the location and siting rules associated with vertical wells. The vertical wells will continue to be located in accordance with DOGM and the Board’s general well location and siting rules, provided that such wells comply with the 660 setback as requested herein, or an exception location as approved by DOGM pursuant to Utah Admin. Code R649-3-3.

13. Petitioner believes that the requested order will allow for the orderly development of the Subject Lands, will prevent waste, will adequately protect the correlative rights of all affected parties and is just and reasonable.

14. Petitioner is filing, concurrent with the filing of this Request, a separate certificate of mailing which lists all persons known to Petitioner whose legally protected interests in the Subject Lands will be affected by this Request, together with their last known addresses. Said list contains the names and addresses of known mineral owners (lessors), overriding royalty or other production interest owners, working interest owners (lessees) and active producers and operators. There are no respondents or adverse parties known at this time to Petitioner.


WHEREFORE, Petitioner respectfully requests that:

1. This Request be set for hearing at the regularly scheduled meeting of the Board on July 25, 2012.
2. That due notice of such hearing be given as provided by law.
3. That following said hearing, the Board enter an order:
 - (a) Providing for the establishment of a 1,280 acre drilling unit for a horizontal well for the production of oil and gas from the Lower Green River and Wasatch Formations covering the Subject Lands.
 - (b) Allowing the continued location and drilling of all vertical wells, including existing and future wells, within the Subject Lands in conformance with the requirements outlined in Utah Admin. Code R649-3-2 and Utah Admin. Code R649-3-3;
 - (c) Modify Utah Admin. Code R649-3-2(5) to provide that no vertical well may be located closer than 660 feet, or lesser distance as determined to be appropriate by the Board, to a producing horizontal interval located in the same formation;
 - (d) Making such findings and orders in connection with this Request as it deems necessary; and

(e) Providing for such other and further relief as may be just and equitable under the circumstances.

Respectfully submitted this 20th day of June, 2012.

BERRY PETROLEUM COMPANY

By 
A. John Davis
Mark L. Burghardt
HOLLAND & Hart, LLP
222 South Main Street, Suite 2200
Salt Lake City, UT 84101
Telephone: (801) 799-5800
Attorneys for Petitioner, Berry Petroleum
Company

Address of Petitioner:
Berry Petroleum Company
1999 Broadway Street, Suite 3700
Denver, CO 80202
Telephone (303) 999-4400
Attn: Joe Judd, Landman

5638067_1.DOCX